

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

FRANK JONES,

Petitioner,

vs.

CALIPATRIA STATE PRISON,

Respondent.

CASE NO. CV 10-02174 JVS (RZ)

ORDER SUMMARILY DISMISSING  
PETITION FOR WRIT OF HABEAS  
CORPUS WITHOUT PREJUDICE

This habeas petition is successive and lacks the required Court of Appeals authorization for such a petition. As a result, this Court lacks jurisdiction to entertain it.

Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts provides that “[i]f it plainly appears from the face of the petition and any exhibits annexed to it that the petitioner is not entitled to relief in the district court, the judge shall make an order for its summary dismissal and cause the petitioner to be notified.”

Section 2244 of Title 28, part of the Antiterrorism and Effective Death Penalty Act, requires that the district court dismiss most successive habeas corpus petitions:

1 (b)(1) A claim presented in a second or successive  
 2 habeas corpus application under section 2254 that was presented  
 3 in a prior application shall be dismissed.

4 (2) A claim presented in a second or successive habeas  
 5 corpus application under section 2254 that was not presented in  
 6 a prior application shall be dismissed unless –

7 (A) the applicant shows that the claim relies  
 8 on a new rule of constitutional law, made  
 9 retroactive to cases on collateral review by the  
 10 Supreme Court, that was previously unavailable; or

11 (B) (i) the factual predicate for the claim  
 12 could not have been discovered previously through  
 13 the exercise of due diligence; and

14 (ii) the facts underlying the claim, if proven  
 15 and viewed in light of the evidence as a whole,  
 16 would be sufficient to establish by clear and  
 17 convincing evidence that, but for constitutional  
 18 error, no reasonable factfinder would have found  
 19 the applicant guilty of the underlying offense.

20 (3)(A) Before a second or successive application  
 21 permitted by this section is filed in the district court, the  
 22 applicant shall move in the appropriate court of appeals for an  
 23 order authorizing the district court to consider the application.

24 . . .

25 In *Felker v. Turpin*, 518 U.S. 651, 656-57, 116 S. Ct. 2333, 135 L. Ed. 2d 827  
 26 (1996), the Supreme Court noted that this statute transferred the screening function for  
 27 successive petitions from the district court to the court of appeals. This provision has been  
 28 held to be jurisdictional; the district court cannot entertain a successive petition without

1 prior approval from the Court of Appeals. *Cooper v. Calderon*, 274 F.3d 1270, 1274 (9th  
2 Cir. 2001). The district court therefore either must dismiss a successive petition for lack  
3 of jurisdiction, or it may transfer the action, in the interest of justice, to the court where the  
4 action properly could have been brought. 28 U.S.C. § 1631; *Pratt*, 129 F.3d at 57.

5 In the Petition before the Court, Petitioner Frank Jones attacks his 2005  
6 convictions and sentences for robbery and other crimes. He previously challenged them  
7 on habeas in this Court in 2009, but the Court dismissed that action with prejudice as  
8 untimely. *Jones v. Scribner*, No. CV 09-0019 JVS (RZ) (Judgment filed July 10, 2009).  
9 Petitioner has not obtained Ninth Circuit authorization, as is required before he properly  
10 may file another habeas petition in this Court. *See McNabb v. Yates*, 576 F.3d 1028, 1029-  
11 30 (9th Cir. 2009) (per curiam) (prior dismissal based on untimeliness is a dismissal on the  
12 merits for purposes of successive-petition statute). No factors appear which make it  
13 preferable to transfer this case to the Court of Appeals, rather than dismissing it.

14 Accordingly, IT IS ORDERED that the Petition is dismissed.

15  
16 DATED: March 31, 2010



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19 JAMES V. SELNA  
UNITED STATES DISTRICT JUDGE  
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